

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Amendment of Section 73.202(b), )

Table of Allotments, )

FM Broadcast Stations. )

(Quannah, Archer City, Converse, Flatonia, )

Georgetown, Ingram, Keller, Knox City, )

Lakeway, Lago Vista, Llano, McQueeney, )

Nolanville, San Antonio, Seymour, Waco and )

Wellington, Texas, and Ardmore, Durant, )

Elk City, Healdton, Lawton and Purcell, )

Oklahoma.) )

MM Docket No. 00-148

RM-9939

RM-10198

**RECEIVED**

AUG 16 2004

Federal Communications Commission  
Office of Secretary

To: Office of the Secretary

Attn: The Commission

**REPLY TO OPPOSITION OF FRITZ TO APPLICATION FOR REVIEW**

Rawhide Radio, L.L.C., Capstar TX Limited Partnership, Clear Channel Broadcasting Licenses, Inc., and CCB Texas Licenses, L.P. (collectively, "Joint Parties"), by their respective counsel, hereby reply to the late-filed "Opposition to Application for Review" filed on July 20, 2004, by J. & J. Fritz Media, Ltd. ("Fritz") in the above-captioned proceeding.<sup>1</sup>

1. Fritz concedes all the salient points set forth in the Joint Parties' Application for Review. First, Fritz concedes the basic proposition that the Commission will consider, as a new petition, a counterproposal which is found not to be mutually exclusive with an original proposal. See Opposition at 5. The Joint Parties have cited numerous cases in which this procedure was followed. Fritz notes that those cases arose in a variety of factual situations, but gives no reason why the factual differences between those cases and the instant situation are material. Indeed,

<sup>1</sup> Fritz's opposition was due on July 7, 2004. The Joint Parties oppose acceptance of Fritz's late-filed opposition for the reasons set forth in their July 12, 2004 Opposition to Fritz's Motion for Extension of Time. Nevertheless, the Joint Parties address the substance of Fritz's Opposition herein.

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those cases constitute valid precedent. They stand for the straightforward proposition that a rule making proposal properly before the Commission should be considered by the Commission – if not in the original proceeding in which it was filed, then in a new proceeding.

2. Second, Fritz concedes that the Joint Parties included within their counterproposal an alternative proposal (which at that time they designated the “KVCQ Alternative”) upon which the Commission could act separately. *See* Opposition at 5. Thus, the Commission did not need to “determine that one portion . . . might be capable of being separated,” or “assume the [Joint Parties] would favor separating the one portion of the counterproposal in this manner.” *See* Fritz Opposition at 4.<sup>2</sup> Rather, as Fritz knows perfectly well, the Joint Parties *explicitly showed* how the counterproposal could be separated, and *clearly stated* their preference that it was to be separated in this manner if for some reason the counterproposal as a whole could not be granted.<sup>3</sup>

3. Finally, Fritz correctly states that any new rule making proceeding must proceed in accordance with the technical requirements as they stand at the present time. *See* Opposition at 5-6. Fritz also correctly states that any erroneously dismissed rule making petitions should be reinstated. *See* Opposition at 6. Fritz even argues that a new Notice of Proposed Rule Making must be released. *See* Opposition at 6-7. This is exactly what the Joint Parties have been saying all along.

4. The Joint Parties urge the Commission to act in just the manner that Fritz has set forth. All technically acceptable proposals, including the Joint Parties’ alternative proposal and

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<sup>2</sup> Fritz gets carried away with its own verbiage. Fritz argues that it is not the responsibility of the Commission to determine that a proposal is “viable as a petition for rule making.” Opposition at 4. Of course it is. That is what the Commission is supposed to do when presented with a proposal for rule making.


<sup>3</sup> *See* Counterproposal at 36 (“in the unlikely event that the Commission finds a defect in some portion of the proposal, it can be severed into two separate proposals, *either one of which can be granted independently.*”) (emphasis added); *id.* at 38 (“the KVCQ Alternative can likewise be granted on its own merits”); *id.*, Engineering Statement, at 4 (“*option II is to be used only if the Joint Petitioners counterproposal cannot be adopted in totality*”) (emphasis in original).

all mutually exclusive proposals that were subsequently filed (including any that were erroneously dismissed), should be consolidated into one proceeding and a Notice of Proposed Rule Making issued inviting public comment. This approach is consistent with precedent and faithful to the Commission's procedures for FM allocations. This approach is *not* the same as requiring the Joint Parties to re-file their alternative proposal today. The difference is that the Commission has erroneously accepted and acted upon various proposals that were in conflict with the Joint Parties' alternative proposal. While some of these proceedings have been dismissed, these dismissals are not final, and others have yet to be addressed. The critical fact is that some of these proceedings could technically bar a re-filing of the Joint Parties' alternative proposal. Since the Joint Parties should not be penalized for the Commission's errors, the proper resolution is for the Commission to promptly issue a new Notice of Proposed Rule Making and include the Joint Parties' alternative proposal and all mutually exclusive proposals that have been filed since October 10, 2000.

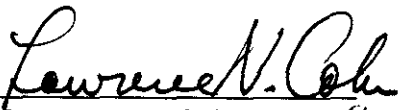
WHEREFORE, as the Joint Parties have requested, the Commission should issue a new Notice of Proposed Rule Making soliciting comment on Joint Parties' alternative proposal and all mutually exclusive proposals properly before the Commission.

Respectfully submitted,

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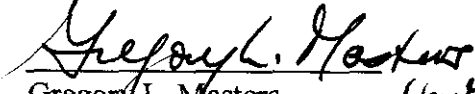
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## CERTIFICATE OF SERVICE

I, Lisa M. Holland, a secretary in the law firm of Vinson & Elkins, do hereby certify that on this 16th day of August, 2004, I caused copies of the foregoing "Reply to Opposition of Fritz to Application for Review" to be mailed, first class postage prepaid, or hand delivered, addressed to the following persons:

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